

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Crim. No. 24-37 (JWB/DJF)

Plaintiff,

v.

William Antonio McClendon,

**ORDER ACCEPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

Defendant.

Andrew S. Dunne, Esq., United States Attorney's Office, counsel for Plaintiff.

Lisa M. Lopez, Esq., Office of the Federal Defender, counsel for Defendant.

Defendant William Antonio McClendon has objected to the August 15, 2024 Report and Recommendation ("R&R") issued by United States Magistrate Judge Dulce J. Foster. (Doc. Nos. 32, 33.) The United States responded to Defendant's objections. (Doc. No. 34.) In the R&R, the Magistrate Judge recommends denying Defendant's Motion to Suppress Evidence (Doc. No. 14). After review, and for the reasons below, Defendant's objections are overruled and the R&R is accepted.

DISCUSSION

District courts review the portions of a magistrate judge's R&R to which a party objects de novo. 28 U.S.C. § 636(b)(1); D. Minn. LR 72.2(b)(3). A district judge may accept, reject, or modify all or part of the findings or recommendations. *See id.* Here, the R&R is well-reasoned and correctly applies the law.

The relevant facts are set forth in detail in the R&R, and those facts are fully adopted here. In summary, Defendant was on Intensive Supervised Release (“ISR”) during the time in question. He was searched by his ISR Agent, Joseph Proulx, with help from Department of Corrections Police, on October 6, 2023, based on information received from another supervisee who was living at the same transitional home with Defendant. The supervisee reported that Defendant was violating his conditions, stating Defendant “has a gun on him or in his room at all times.” (Doc. No. 15-2.) The search yielded a firearm and fentanyl pills, leading to the new charges against Defendant. Defendant moved to suppress the evidence obtained from this search, arguing that the search violated his Fourth Amendment rights because it was conducted without a reasonable suspicion of a violation.

The Magistrate Judge recommends denying the motion to suppress, finding the search was permissible even in the absence of reasonable suspicion, based on Defendant’s ISR conditions. The Magistrate Judge also concludes that reasonable suspicion existed.

Defendant’s objections primarily restate the arguments previously presented to the Magistrate Judge, including the contention that his release conditions only authorized “unannounced” searches, and not suspicionless ones. On this point, Defendant challenges the Magistrate Judge’s reliance on the Eighth Circuit’s decision in *United States v. Kuhnel*, 25 F.4th 559 (8th Cir. 2022).

After de novo review, the Magistrate Judge’s application of *Kuhnel*, and the reasoning establishing that Defendant’s conditions of release authorized suspicionless

searches, is supported and accepted. The Eighth Circuit in *Kuhnel* plainly stated that suspicionless searches are permissible under conditions much like those imposed on Defendant, when the defendant had been made aware of such a condition. Additionally, as the Magistrate Judge noted, even if reasonable suspicion were required, the search of Defendant was supported by reasonable suspicion based on the specific and detailed tip from an informant who was a fellow ISR supervisee living in the same home as Defendant.

For the reasons set forth in the R&R, and having overruled Defendant's objections, the Magistrate Judge's recommendation is accepted in full.

ORDER

IT IS HEREBY ORDERED that:

1. Defendant's Objections to the Magistrate Judge's Report and Recommendation (Doc. No. 33) are **OVERRULED**;
2. The Report and Recommendation (Doc. No. 32) is **ACCEPTED** in full;
and
3. Defendant's Motion to Suppress Physical Evidence (Doc. No. 14) is **DENIED**.

Date: October 9, 2024

s/ Jerry W. Blackwell
JERRY W. BLACKWELL
United States District Judge